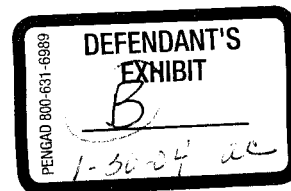


LAW OFFICES OF
William H. Blessing
119 East Court Street
Suite 500
Cincinnati, Ohio 45202

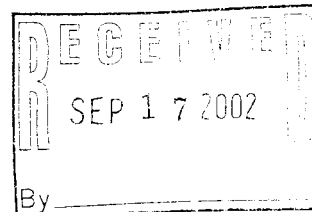
E-Mail: jimschwantes@cinci.rr.com

Telephone: 513-621-9191
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September 16, 2002

Gary R. Lewis, Attorney
Cincinnati Club Building, Suite 915
30 Garfield Place
Cincinnati, OH 45202



Re: Bryant v. Bigelow, et al.

Dear Gary:

Enclosed please find a copy of the deposition of Don Lerner taken in Hamilton County case number A0005052, *Bigelow v. Burbrink*. Plaintiffs submit this deposition in lieu of an expert witness report. The opinions of Mr. Lerner for the above referenced case will be consistent with his opinions for *Bigelow v. Burbrink*.

Sincerely,

James E. Schwantes /alv

James E. Schwantes

JES/alv
Enclosure

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

- - -

PETE BIGELOW, :
Plaintiff, :
vs. :CASE NO. A0005052
MARK W. BURBRINK, et al., :
Defendants. :

- - -

Deposition of DONALD LERNER, ESQ., a
witness herein, taken by the plaintiff as upon
cross-examination, pursuant to the Ohio Rules
of Civil Procedure and pursuant to agreement by
counsel as to the time and place and
stipulations hereinafter set forth, at the
offices of Lerner, Sampson & Rothfuss, 120 E.
Fourth Street, 800 Mercantile Center,
Cincinnati, Ohio, at 10:00 A.M. on Tuesday,
January 8, 2002, before Darlene Anthony, RPR, a
Registered Professional Reporter and Notary
Public within and for the State of Ohio.

- - -

COPY

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 CHRISTOPHER T. LABER, ESQ.

Attorney at Law

4 22 W. Ninth Street

Cincinnati, Ohio 45202

5
6 On behalf of the Defendants:

7 JAMES E. SCHWANTES, ESQ.

of

8 Law Offices of William H. Blessing

119 E. Court Street

9 Suite 500

Cincinnati, Ohio 45202

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1 S T I P U L A T I O N S

2 It is stipulated by counsel for the
3 respective parties that the deposition of
4 DONALD LERNER, ESQ., a witness herein, may be
5 taken at this time by the plaintiff as upon
6 cross-examination and pursuant to the Ohio
7 Rules of Civil Procedure, all other legal
8 formalities being waived by agreement; that the
9 deposition may be taken in stenotypy by the
10 Notary Public-Court Reporter and transcribed by
11 her out of the presence of the witness; and
12 that examination and signature to the
13 transcribed deposition is expressly waived.

14 - - -
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I N D E X

PAGE

BY MR. LABER:

Cross

5

E X H I B I T S

PAGE

Plaintiff's Exhibit 1

7

Plaintiff's Exhibit 2

8

Plaintiff's Exhibit 3

10

Plaintiff's Exhibit 4

10

1 DONALD LERNER, ESQ.
2 of lawful age, a witness herein, being first
3 duly sworn, as hereinafter certified, was
4 examined and deposed as follows:

5 CROSS-EXAMINATION

6 BY MR. LABER:

7 Q. Please tell the court reporter
8 your name and your office address, please.

9 A. Donald Lerner, 120 East Fourth
10 Street, Cincinnati, Ohio.

11 Q. And you're an attorney?

12 A. I am.

13 Q. And you've been practicing since
14 when?

15 A. 1960.

16 Q. And you're still full-time
17 engaged --

18 A. I am.

19 Q. -- in your practice of law?

20 A. Yeah.

21 Q. What's your area of practice?

22 A. Commercial litigation.

23 Q. Do you have any certifications in
24 any specialty from any bar or other
25 association?

1 A. No.

2 Q. Do you do work in real estate?

3 A. Yes.

4 Q. Do you do foreclosure work?

5 A. Yes.

6 Q. Do you currently have any
7 foreclosures in which you're counsel of record?

8 A. I don't think so.

9 Q. Would it be fair to state in the
10 last three years there's maybe been one -- no
11 more than one foreclosure that you've been
12 counsel of record?

13 A. I'm sure that's true. Actually,
14 maybe several, but a small number.

15 Q. Do you know attorney William
16 Blessing?

17 A. I do.

18 Q. And how do you know Mr. Blessing?

19 A. He's a member of the bar. I know
20 lots of members of the bar.

21 Q. In just that capacity?

22 A. We have no professional
23 relationship.

24 Q. Have you ever worked with him
25 before, co-counseled on a case?

1 A. No.

2 Q. Has he ever retained you as an
3 expert witness before?

4 A. No.

5 Q. Has he ever communicated with you
6 about any legal matters outside of this
7 litigation?

8 A. I conferred with him some time ago
9 on a legal matter. It was a casual
10 communication.

11 Q. You approached him as opposed to
12 him approaching you?

13 A. That's correct.

14 Q. Mr. Blessing has designated you as
15 an expert witness in some litigation involving
16 my client, Mr. Bigelow, and his clients, Mark
17 and Michael Burbrink. Are you aware of that
18 designation?

19 A. Yes.

20 Q. Showing you what's been marked as
21 Exhibit Number 1. That's a letter that was
22 sent to me by Mr. Blessing indicating that you
23 were going to be testifying as an expert
24 witness in this matter, describing the subject
25 of your testimony and the basis of your

1 opinions. If you would, please, would you take
2 a moment to read through that letter?

3 A. Alright.

4 Q. You've had a chance to read that?

5 A. I have.

6 Q. Does that accurately reflect your
7 involvement in this litigation?

8 A. Yes. He's spelled the name of my
9 law firm incorrectly, but otherwise it seems
10 accurate.

11 Q. Short of that, the statements in
12 there you believe to be accurate.

13 A. Yes.

14 Q. I believe in there towards the
15 bottom he indicates that you received several
16 documents, and he numbers them one, two, three,
17 five. I'm assuming that's a typo, but he
18 refers to a purchase contract dated
19 February 22nd of 1999?

20 A. I recall a purchase contract dated
21 in 1999. I don't recall the date.

22 Q. I'm showing you what's been marked
23 as Exhibit 2. Does that appear to be the
24 purchase contract that is referred to in the
25 letter?

1 A. Yes.

2 Q. Does that appear to be the
3 contract that you received from Mr. Blessing?

4 A. It appears to be a copy of it. I
5 received a different copy of it. Mine was
6 almost equally illegible. It was slightly more
7 legible along the right margin.

8 Q. There's some writing that goes,
9 oh, what is that, vertical along the right
10 margin of the page?

11 A. Yeah.

12 Q. It doesn't really come out on the
13 copy that I've handed you, but you're
14 indicating that on the copy that Mr. Blessing
15 gave you, that that writing was more apparent?

16 A. Slightly, yeah. I also don't
17 recall one way or the other that the recorder's
18 stamp was on the copy I observed.

19 Q. And the copy that I've given to
20 you as Exhibit Number 2 has a recorder's stamp
21 on it?

22 A. Yes.

23 Q. And the date of that recorder's
24 stamp?

25 A. Filed February 24, '99.

1 Q. Which would indicate to you what,
2 sir?

3 A. That somebody filed this with the
4 Hamilton County Recorder on that date.

5 Q. It's also indicated that you were
6 given a copy of a settlement statement dated
7 March of 1999. I'm showing you what's been
8 marked as Exhibit Number 3. Does that appear
9 to be the settlement statement that was
10 provided to you by Mr. Blessing?

11 A. Yes, it does.

12 Q. And I believe, also, that he
13 refers to a lease agreement. If you would,
14 please, sir, take a look at Exhibit Number 4,
15 and can you tell me, does that appear to be the
16 lease agreement that Mr. Blessing gave you?

17 A. It appears to be a copy of the
18 same lease agreement with which Mr. Blessing
19 furnished me a copy.

20 Q. He also indicates that he gave you
21 a copy of a registered land certificate. I
22 don't have a copy of that to present to you but
23 do you recall receiving that?

24 A. I do. I think that he's omitted
25 number four. I think that there was a number

1 four.

2 Q. What would that number four have
3 been?

4 A. I think it was what is referred to
5 as a grantee statement, but I think we referred
6 to it as a conveyance statement.

7 Q. I don't do real estate law so I'm
8 not familiar with either term. Can you explain
9 to me what that is?

10 A. It's a single page document by
11 which -- it's actually a tax return. It's a
12 document by which the purchaser asserts the
13 purchase price to the auditor for purposes of
14 establishing the appropriate transfer tax.

15 Q. I understand. I know what
16 document you're referring to then. Thank you.
17 And lastly, although it's not numbered,
18 Mr. Blessing indicates that he gave you a
19 written narrative of the factual background as
20 alleged in the complaint. I don't have a copy
21 of that, sir. Do you have a copy of that?

22 A. I have it but I don't have it
23 immediately available.

24 Q. Would you be able to make that
25 available to me after the deposition?

1 A. Sure.

2 Q. Thanks. I appreciate that. Do
3 you recall what the written narrative statement
4 was?

5 A. I recall that it was excerpts from
6 a pleading in a different case involving the
7 general background.

8 Q. Excerpt of a different pleading --

9 A. That's my best recollection.

10 Q. -- than in this case?

11 A. Yes.

12 Q. In another case?

13 A. Yes.

14 Q. Do you recall what the caption on
15 that case was?

16 A. I didn't have a caption. It was
17 represented to me to be a portion of a -- I
18 think a complaint from a different case, but I
19 don't recall that I had the entire pleading or
20 the caption.

21 Q. Did it make reference to
22 Mr. Bigelow and Mark and Michael Burbrink in
23 the factual narrative?

24 A. I think not.

25 Q. Do you recall who the parties were

1 that were represented?

2 A. I don't recall, and I'm not sure
3 they were even mentioned in the portion that I
4 had by name.

5 Q. Just referred to as plaintiff and
6 defendant?

7 A. I just don't recall. As I said,
8 I'd be glad to provide you with a copy.

9 Q. I'd appreciate that. Did you
10 author a report for Mr. Blessing?

11 A. I did not.

12 Q. Did you make any written
13 communications or correspondence to
14 Mr. Blessing regarding your involvement?

15 A. No.

16 Q. Did you make any verbal
17 communications to Mr. Blessing about --

18 A. We had several discussions.

19 Q. Several being how many?

20 A. To my best memory is two.

21 Q. Were these discussions related to
22 what Mr. Blessing has raised in his letter to
23 me of December 10, which is marked as
24 Exhibit 1?

25 A. Would you rephrase your question?

1 I don't understand it.

2 Q. The discussions that you had with
3 Mr. Blessing, were they by telephone?

4 A. I had one telephone conversation
5 with Mr. Blessing -- as I recall, I had one by
6 telephone and one in person.

7 Q. He came to your office?

8 A. He did.

9 Q. And the gist of those discussions,
10 is that reflected in Exhibit Number 1?

11 A. Yes.

12 Q. Exhibit Number 1 indicates that
13 you're familiar with the standards of --

14 A. I can read it to you, "The
15 standards of disclosure requirements and
16 practices involving real estate sales and
17 purchases."

18 Q. Can you explain to me what that
19 means?

20 A. You're asking me to explain to you
21 what Mr. Blessing means, and I'm not qualified
22 to do that. I can explain to you what I think
23 it is.

24 Q. Thank you. I'd appreciate that.

25 A. I think it's the standard of care

1 involved locally in real estate transactions.

2 Q. There's a period there, as opposed
3 to a comma? I was waiting for more.

4 A. That's my understanding.

5 Q. The standard of care involved in
6 real estate transactions. And what would that
7 standard of care be?

8 A. That's like asking what is the
9 standard of care in a tort environment. It's
10 too broad. I can't answer it.

11 Q. Is there any published standard of
12 care that you're referring to?

13 A. I'm not referring to a published
14 standard of care, no.

15 Q. Is there a published standard of
16 care that you're aware of?

17 A. I suspect that there is but I'm
18 not -- I suspect that there is in a real estate
19 practice, and by that I mean people who
20 identify themselves as relators, not lawyers,
21 but I'm not familiar with it.

22 Q. And how are you familiar with the
23 standards of disclosure requirements and the
24 standards involving real estate sales and
25 purchases?

1 A. Well, I've been active in this
2 field for 40 plus years.

3 Q. In the field of commercial
4 litigation?

5 A. Well, most of my -- much of my
6 commercial litigation involves the purchase and
7 sale of real estate, a lot of which is
8 residential.

9 Q. Mr. Blessing also indicates that
10 you will describe in your testimony the
11 transaction in this case. Can you do that for
12 me?

13 A. My total familiarity with the
14 transaction in this litigation is represented
15 by the four documents that we've discussed,
16 plus the grantee statement that I mentioned
17 that's absent from these discussions, plus what
18 Mr. Blessing has told me about the transaction
19 that's outside of these documents.

20 Q. So any description that you would
21 have of the transaction is based upon those
22 five documents that were given to you by
23 Mr. Blessing, plus the narrative report -- or
24 the narrative pleading that Mr. Blessing gave
25 to you?

1 A. Plus the discussions that I've had
2 with Mr. Blessing and his associate.

3 Q. And his associate would be --

4 A. Jim.

5 Q. Mr. Schwantes?

6 A. Yes.

7 Q. Have they given you additional
8 information in those discussions that's not
9 contained in that narrative?

10 A. I think the answer is yes, but I
11 don't have the narrative in front of me nor do
12 I have a photographic memory about what was
13 involved in our discussion, but I think the
14 answer is yes.

15 Q. Did you make notes from your
16 discussion?

17 A. Yes.

18 Q. Do you still have a copy of those
19 notes?

20 A. Yes.

21 Q. Would you be willing to provide me
22 with a copy of your notes from those
23 discussions?

24 A. I don't have a problem with giving
25 you a copy.

1 Q. Thank you. So based upon the
2 discussions that you've had with Mr. Blessing
3 and Mr. Schwantes and the documents that
4 they've provided to you that we've discussed,
5 can you describe for me the transaction in this
6 case?

7 A. My understanding of the
8 transaction is that on or about February 22nd
9 or perhaps shortly before that time, there was
10 a foreclosure pending against the real estate
11 which is the subject of this contract, this
12 litigation, which was at the time owned by Mark
13 and Michael Burbrink. The fair market value of
14 the property was something in the order and
15 magnitude of \$100,000. That it was in
16 foreclosure. It was roughly six months in
17 arrears. It had not yet been advertised for
18 sale by the sheriff but that was imminent.
19 That the owners, Mark and Michael Burbrink,
20 were approached by a -- I'm trying to read her
21 name. Rosanne Christian, I think --

22 Q. Yes, sir.

23 A. -- who was an associate of
24 Mr. Bigelow, and she suggested that Mr. Bigelow
25 could -- that she had a friend, Mr. Bigelow,

1 who could resolve their problem by taking the
2 matter to foreclosure and getting them back in
3 their house. They would never lose possession
4 of their house under the arrangement that she
5 was proposing. That Mr. Bigelow would arrange
6 to get the house back to them on land contract
7 for a year, and at the conclusion of the year
8 would arrange further financing -- new
9 financing so they could continuously have
10 possession and ownership of the property.

11 That they signed this contract,
12 which is your Exhibit 2, I assume on or about
13 February 22, 1999. The contract is vague in
14 some respects to me. It talks about the buyer
15 will pay -- buyer being Mr. Bigelow -- will pay
16 the closing costs and all attorneys fees
17 associated with the foreclosure. That the
18 purchase price will be zero. That the seller
19 will receive -- seller being Messrs.
20 Burbrink -- will receive 100 percent financing,
21 and that is somewhat consistent with the
22 settlement statement, which is your Exhibit 3,
23 which appears about three weeks later on
24 March 12th.

25 There are significant

1 inconsistencies in my view with regard as
2 between the purchase contract and the
3 settlement statement. The purchase contract
4 describes the purchase price to be zero. The
5 settlement statement discloses the sales price,
6 which I interpret to be the same as the
7 purchase price, and identified as both the
8 purchase price and the sales price on the
9 settlement statement, to be \$31,397.48. The
10 closing statement discloses deductions to the
11 seller of \$22,000 -- around these numbers, I'm
12 rounding them off -- \$22,000 is the mortgage
13 assumed by the purchaser.

14 Q. Sure.

15 A. A charge to the seller of \$900 for
16 real estate tax proration, a charge of \$15 for
17 lost registered land certificate affidavit, a
18 reinstatement charge of roughly \$6,000,
19 transfer tax \$78 and change, and a charge of
20 \$50 for deed preparation. It also discloses
21 certain obligations and charges of the
22 purchaser, which are generally associated with
23 paying Mr. Meckstroth \$50 and recording the
24 deed.

25 I find that the purchase price or

1 the sales price of 31,000 and roughly \$400 to
2 be inconsistent with the purchase price of zero
3 that the contract calls for. The deduction for
4 the mortgage -- assuming a purchase price of
5 \$31,000 and change -- a deduction which to my
6 mind is inconsistent with a property which has
7 a fair market value of roughly \$100,000, but it
8 is consistent with property being in
9 foreclosure and being six or eight months
10 delinquent. The \$22,000 being the mortgage
11 balance. Reinstatement charges would include
12 whatever number of delinquent monthly
13 installments are due, which would probably
14 include principle and interest, and escrow for
15 taxes and insurance. If so, then the \$900
16 prorated for taxes seems duplicative of what's
17 in the reinstatement charges, but I can't, from
18 what I have, I can't absolutely determine that.

19 The grantee statements, which we
20 don't have before me, disclosed a purchase
21 price of roughly \$53,000, which was the sum of
22 the \$31,000 purchase price as disclosed by this
23 statement and the principle balance of the
24 mortgage of roughly \$22,000. The transfer tax
25 which was charged to the quote "seller" in this

1 instance is consistent with the \$31,400
2 purchase price disclosed by this statement but
3 inconsistent with the purchase contract
4 disclosure of zero.

5 There is a suggestion in this
6 purchase contract that the seller is going to
7 be refinanced, and that's consistent with
8 Mr. Blessing's narrative description to me of
9 the transaction. I was led to believe that the
10 transaction contemplated a land installment
11 sales contract by which the Burbrinks would
12 reacquire title to the property immediately at
13 the closing from Mr. Bigelow, and that they
14 would gain legal title at the end of the year.
15 The lease agreement doesn't disclose any of
16 that. The lease agreement suggests that it's a
17 one year lease at roughly \$500 a month, the
18 first two payments of which are waived,
19 according to the purchase contract.

20 Based on my experience, it strikes
21 me that most owners of distressed property
22 that's worth something in the order of
23 \$100,000, even though they're in foreclosure,
24 would be unwilling to sell the property on
25 these terms, for \$2,000 and a one year lease.

1 My understanding is that the \$470 monthly rent
2 in the lease might be slightly below market but
3 not enough to justify that discrepancy.

4 Q. Just to see if I understand you,
5 it's your belief from reading the narrative
6 that's provided to you and these documents that
7 Mr. Bigelow was to purchase the property from
8 the Burbrinks and immediately sell it back to
9 them under a land contract at the same closing?

10 A. Yes.

11 Q. And you get that from the
12 paperwork where?

13 A. Well, I get it from three sources.
14 I get it from the suggestion in the purchase
15 contract that the seller is to receive 100
16 percent financing. No other scenario that
17 occurs to me is consistent with that statement.
18 I get it from the economics of the transaction;
19 no reasonable seller would sell \$100,000
20 property for zero or \$2,000 or \$30,000 or even
21 \$50,000, even in the distressed environment of
22 a foreclosure, when too many other alternatives
23 are available. For instance, you know, any
24 foreclosure of sale is subject to two separate
25 equities of redemption: The statutory equity

1 of redemption and the judicial equity of
2 redemption, so that that affords, by statutory
3 design and by judicial discretion, the owner of
4 a distressed property to sell a property,
5 refinance which is unlikely, or sell the
6 property for something perhaps less but
7 modestly less than the real value of the
8 property and redeem the property even after the
9 decree and foreclosure, which currently had not
10 yet occurred in this case. In fact, even after
11 a sheriff's sale, which definitely had not
12 occurred in this case. And no other scenario
13 that occurs to me is consistent with the facts
14 as I understand them.

15 So the sources from which I
16 perceive that there's to be a land contract are
17 Mr. Blessing advised me that that's what his
18 clients understood, this document is consistent
19 with that, and the economics is consistent with
20 that.

21 Q. So your description is based upon
22 an assumption that the Burbrinks understood
23 that this was going to be a land contract, that
24 the Burbrinks understood that they had a right
25 of redemption, and that the Burbrinks

1 understood that their property was worth
2 \$100,000 or in excess thereof.

3 A. It wouldn't be all those elements;
4 you need some of those elements. All of those
5 elements are supporting of my thesis, but based
6 on my experience, I think owners of distressed
7 property have multiple opportunities when
8 there's substantial equity. Wouldn't need to
9 be \$100,000. Fifty thousand would have
10 produced the same result. I understand this
11 property was worth significantly more. The
12 criteria is whether there's equity. I can't
13 tell from these documents what was the purchase
14 price. I have three inconsistent statements of
15 purchase price. I have zero, I have \$30,000
16 and I have \$50,000. My understanding is that
17 the property was worth more than zero, more
18 than 30, and more than 50. Therefore, there
19 was quote "equity" in the property. In my
20 experience when there is equity in the property,
21 in this community, that is in Hamilton County,
22 the sellers of distressed property that's in
23 foreclosure are inundated with solicitations
24 from various real estate speculators to acquire
25 the property.

1 My experience suggests that the
2 homeowners generally have a sense of what their
3 property is worth. Not necessarily totally
4 accurate, but they have a significant sense of
5 what it's worth, and they know that they can
6 sell it even in foreclosure because they are
7 typically afforded multiple opportunities when
8 there's substantial equity -- even minimal
9 equity in the property. So I think it's
10 unlikely that -- I've never met these people,
11 I've never talked to them, I don't know what
12 they know, but based on my experience it seems
13 unlikely that they would not know that their
14 property is worth substantially more than zero,
15 or even substantially more than the \$20,000 or
16 so they owed on the mortgage. Therefore, it
17 seems, based on my experience, substantially
18 unlikely that they would sell it for zero or
19 sell it for the \$30,000 that's suggested on the
20 closing statement when the property is worth in
21 the order or magnitude of three times that
22 amount.

23 So their suggestion through
24 Mr. Blessing that they understood that this was
25 a financing transaction, they were going to

1 maintain the property on land contract, is
2 consistent with my observation of the
3 documents.

4 Q. Let me back up a second. Did you
5 do any other investigation, other than what
6 Mr. Blessing gave to you? Did you look at any
7 other records or talk to any other people?

8 A. No.

9 Q. And you indicated that you had at
10 least two communications with Mr. Blessing to
11 discuss this matter. Did he give you any facts
12 that aren't contained in the written narrative?

13 A. I've already told you, I don't
14 remember precisely what the narrative says.
15 Between Mr. Blessing and the written narrative,
16 I perceive the facts which I've just described
17 to you. I should say, between all the
18 documents that we've discussed plus my
19 discussions with Mr. Blessing, I understood
20 those to be the facts.

21 Q. Mr. Blessing says that you will
22 opine the transaction in this case did not
23 accurately reflect the real estate contract,
24 and I think you just discussed that. We just
25 talked about that.

1 A. I did.

2 Q. It appears that the closing on the
3 purchase contract was orchestrated by Attorney
4 John Meckstroth; is that correct?

5 A. I'm told that. I have no
6 independent knowledge of that.

7 Q. Does the settlement statement
8 indicate that it was prepared by John R.
9 Meckstroth, Junior?

10 A. Yeah, the second page of the
11 document. I assume that's part of the
12 document.

13 Q. Are you familiar with
14 Mr. Meckstroth?

15 A. Not really. I'm familiar with his
16 father. I know his father but I don't
17 really -- I know who he is and I'm sure we've
18 said hello, but I don't know him.

19 Q. Familiar that he's also a member
20 of the Civil Division of the Hamilton County
21 Prosecutor's Office dealing in their real
22 estate matters?

23 A. I didn't know that, no.

24 Q. Mr. Blessing also says that you
25 will opine that this transaction falls far

1 short of that necessary to effect a real estate
2 sale with integrity and honesty. Would you
3 believe integrity and honesty to be a subject
4 for your expert opinion?

5 A. I can tell you my experience, I
6 can tell you my exposure, but I can't opine on
7 my qualifications as an expert on that subject.

8 Q. So you wouldn't be able to tell
9 the court that you're an expert in integrity
10 and honesty?

11 A. It wouldn't be my function to tell
12 the court that. I can tell the court my
13 experiences and the court could make that
14 determination. I couldn't make it for the
15 court.

16 Q. I guess what I'm trying to do is
17 pin you down. Are you an expert in integrity
18 and honesty?

19 A. I feel like my experience
20 qualifies me as an expert in real estate
21 transactions such as this, and I feel like
22 integrity -- I wouldn't describe myself as an
23 expert in integrity but I would say that I have
24 enough experience to qualify me as an expert in
25 real estate transactions such as this.

1 Q. Thanks. Mr. Blessing also says
2 that you may testify concerning pattern,
3 motive, absence of mistake relating to the
4 scheme alleged. Start with the scheme alleged.
5 Can you tell me what this scheme alleged is
6 that you're going to testify to?

7 A. If you'll ask me a question, I'll
8 be glad to answer it. I have an understanding
9 of a fact pattern. I have an understanding
10 from Mr. Blessing through the written documents
11 that we've talked about and the verbal
12 communications that we've talked about that
13 this was one of a series of transactions of
14 similar import. I can describe for you, I can
15 answer your questions, but I can't tell you
16 what's in Mr. Blessing's head.

17 Q. I appreciate that, and what I'm
18 trying to get at is is there some sort of
19 scheme alleged in the complaint that you're
20 going to testify about?

21 A. I've never read the complaint. I
22 couldn't answer that.

23 Q. Is there some sort of scheme
24 involving Mr. Bigelow that you're going to
25 testify about?

1 A. I'm going to respond to questions.
2 If you're asking me am I acquainted with a
3 scheme, my answer is as I've explained to you.
4 I know only what Mr. Blessing has enlightened
5 me about both by the verbal discussions and by
6 the documents that we've discussed, and
7 Mr. Blessing has informed me that, as I've
8 said, that this is one in a series of similar
9 transactions.

10 Q. Similar in what way, sir?

11 A. Similar in that Mr. Bigelow,
12 through his acquaintance or agent -- I don't
13 know the exact relationship, that Miss
14 Christian would approach owners of distressed
15 property -- by that I mean property in
16 foreclosure, but restricted to properties where
17 there is substantial equity, in an attempt to
18 acquire those properties without a concomitant
19 equity participation. That is, to take over --
20 I'm using the words carefully in explaining
21 that to you -- to take over the mortgage and
22 sell or rent the property as profitable without
23 making a commitment to the equity of the
24 property. I say take over because the seller
25 statement here talks about a mortgage assumed,

1 but the deed which I've been furnished
2 doesn't -- did I look at the deed?

3 Q. No, sir, I didn't have a copy of
4 that.

5 A. I'm told that the deed does not
6 have assumption language in it.

7 Q. I know you set it forth in plain
8 language but I really didn't understand you,
9 Mr. Lerner. The scheme is that Mr. Bigelow,
10 through Miss Christian, approaches people whose
11 property is in foreclosure. There's equity in
12 the property, and then I lost you.

13 A. Well, as I said earlier, it's
14 inconceivable to me that people who have
15 property worth two or three times or more the
16 mortgage balance are going to let somebody take
17 over this property without indemnifying their
18 equity, unless they are somehow misled about
19 where that's going. In this case, my
20 understanding, based on what we've talked
21 about, is that they thought they were entering
22 into a land installment, land contract, whereby
23 they were going to maintain full possession and
24 ultimate ownership of the property.

25 I don't think that people with

1 houses that are worth 75 or 100 or 150 thousand
2 dollars, I don't think those people sell those
3 houses outright for a small fraction of the
4 value of the property without somehow being
5 misled. And in this case, the explanation that
6 they were offered, they thought they were
7 entering into a land contract transaction, is
8 completely consistent with the economics and
9 the documents, except that there is no land
10 contract. At least I haven't seen it.

11 Q. So your testimony concerning
12 pattern, motive, and absence of mistake
13 relating to the scheme that you've just
14 mentioned, what will that testimony be?

15 A. If you could tell me what the
16 question will be, I can tell you how I can
17 answer it, but I thought I answered the
18 question.

19 Q. Yes, sir. What I'm doing is
20 referring to Mr. Blessing's letter of
21 December 10, 2001 to me, which is marked as
22 Exhibit Number 1. That refers to what you will
23 testify to.

24 A. Well, sir, it says, "He may also
25 testify concerning," and I will answer any

1 questions that are postulated to me. I don't
2 know what those questions will be.

3 Q. Have you discussed those potential
4 questions with Mr. Blessing?

5 A. No.

6 Q. Have you discussed this particular
7 topic with Mr. Blessing?

8 A. Yes, as I responded to your
9 earlier questions.

10 Q. And with respect to the particular
11 topic, I'm referring to pattern, motive and
12 absence of mistake.

13 A. Mr. Blessing, as I said twice
14 already, Mr. Blessing told me that this was one
15 of a series of transactions that had the common
16 features which I've described. In that sense
17 we talked about pattern. I don't know
18 particularly what you mean by motive or
19 mistake.

20 Q. When I asked you to read through
21 this letter before and if it accurately
22 reflected your discussions with Mr. Blessing,
23 you indicated it did, and I'm just trying to
24 understand what he means or what you mean --

25 A. Well first of all, I don't mean

1 anything. It's not my statement, okay? He
2 says, "He may also testify concerning pattern,
3 motive and absence of mistake." If I'm asked
4 about those subjects, I will tell you -- by you
5 or by him or anyone else, I will respond as
6 best I can. Mr. Blessing and I have not
7 discussed those issues no more than I've
8 related to you and I'm, therefore, unable to
9 tell you what's in his head.

10 Q. Just to make sure I'm on the same
11 page, you've not discussed with Mr. Blessing
12 any testimony regarding pattern, motive or
13 mistake?

14 A. No. I've related to you our
15 discussions, and other than those discussions I
16 haven't discussed those issues.

17 Q. You have a fee agreement with
18 Mr. Blessing for your services?

19 A. No.

20 Q. Are you charging Mr. Blessing or
21 his client for your services?

22 A. We've never discussed the issue.

23 Q. Have you had separate
24 conversations with Mr. Blessing's associate,
25 Mr. Schwantes?

1 A. I don't recall ever having a
2 discussion that didn't involve Mr. Blessing.

3 Q. Did you ever have any separate
4 discussions with an attorney by the name of
5 Rick Hopkins?

6 A. No, that I can recall. I don't
7 know that name.

8 Q. You don't know Mr. Hopkins?

9 A. No.

10 Q. Mr. Lerner, I appreciate your
11 time. If you would, please, get me a copy of
12 the narrative that Mr. Blessing sent you and
13 the notes that you have, I'd appreciate it.

14

15

(Signature Waived)

16

DONALD LERNER, ESQ.

(DEPOSITION CONCLUDED AT 10:42 A.M.)

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C E R T I F I C A T E

STATE OF OHIO :

: SS

COUNTY OF HAMILTON :

I, Darlene Anthony, RPR, the undersigned, a duly qualified notary public within and for the State of Ohio, do hereby certify that DONALD LERNER, ESQ. Was by me first duly sworn to depose the truth, the whole truth, and nothing but the truth; the foregoing is the deposition given at said time and place by said witness; that said deposition was taken pursuant to stipulations hereinbefore set forth; that said deposition was taken by me in stenotypy and transcribed by means of computer; and that examination and signature to the transcribed deposition is expressly waived; that I am neither a relative of any of the parties or any of their counsel; and I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D), and have no interest in the result of this action.

IN WITNESS WHEREOF, I hereunto set my hand and official seal of office at Cincinnati, Ohio, this 16th day of January, 2002.

My Commission expires: Darlene Anthony
May 10, 2006

Notary Public-State of Ohio